

THE TAX COURT

DECLARATORY JUDGMENTS RELATING TO
QUALIFICATION OF CERTAIN RETIRE-
MENT PLANS**§ 1.7476-1 Interested parties.**

(a) *In general*—(1) *Notice requirement.* Before the Internal Revenue Service can issue an advance determination as to the qualified status of certain retirement plans, the applicant must provide the Internal Revenue Service with satisfactory evidence that such applicant has notified the persons who qualify as interested parties, under regulations prescribed under section 7476(b)(1) of the Code, of the application for such determination. See section 3001(a) of the Employee Retirement Income Security Act of 1974 (88 Stat. 995). For the rules for giving notice to interested parties, see § 1.7476-2 and paragraph (o) of § 601.201 of this chapter (Statement of Procedural Rules).

(2) *Declaratory judgments.* Section 7476 provides a procedure for obtaining a declaratory judgment by the Tax Court with respect to the initial or continuing qualification under subchapter D of chapter 1 of the Code of a retirement plan defined in section 7476(d), in the case of an actual controversy involving:

(i) A determination by the Internal Revenue Service with respect to the initial qualification or continuing qualification under such subchapter of such a plan, or

(ii) A failure by the Internal Revenue Service to make a determination with respect to:

(A) Such initial qualification of such a plan, or

(B) Such continuing qualification of such a plan, if the controversy arises from a plan amendment or plan termination.

Under section 7476(d) the term “retirement plan” means a pension profitsharing, or stock bonus plan described in section 401(a), or a trust which is part of such a plan, an annuity plan described in section 403(a), or a bond purchase plan described in section 405(a). This procedure is available only to the employer, the plan administrator as defined in section 414(g), an employee who qualifies as an inter-

ested party as defined in this section, or the Pension Benefit Guaranty Corporation, where such person has an actual controversy involving a determination described in paragraph (a)(2)(ii) of this section. In the case of an application for such a determination, this procedure is available only if such determination or failure to make such determination is with respect to an application described in paragraph (b)(7) of this section. In addition, in the case of such an application, if a petitioner was the applicant for the determination, the Tax Court may hold, under section 7476(b)(2), the filing of a pleading for a declaratory judgment to be premature unless the petitioner establishes to the satisfaction of the Tax Court that such petitioner has caused the interested parties to be notified in accordance with this section and § 1.7476.2

(b) *Interested parties*—(1) *In general.* If paragraphs (b) (2), (3), (4), and (5) of this section do not apply, then, except as otherwise provided in paragraphs (b)(6) (i), (ii), and (iii) of this section, the following persons shall be interested parties with respect to an application for an advance determination as to the qualified status of a retirement plan:

(i) All present employees of the employer who are eligible to participate in the plan (as defined in paragraph (d)(2) of this section), and

(ii) All other present employees of the employer whose principal place of employment (as defined in paragraph (d)(3) of this section) is the same as the principal place of employment of any employee described in paragraph (b)(1)(i) of this section.

(2) *Certain plans covering a principal owner.* Notwithstanding paragraph (b)(1) of this section, where:

(i) A principal owner (within the meaning of paragraph (d)(2) of § 1.414(c)-3) of the employer or of a common parent of the employer (where the employer is a member of a parent-subsidiary group of trades or businesses under common control under section 414 (b) or (c)) is eligible to participate in the plan, and

(ii) The number of employees employed by such employer (including all employees who by reason of section 414

(b) or (c) are treated as employees of such employer) is 100 or less then except as otherwise provided in paragraphs (b)(6) (i), (ii), and (iv) of this section, all present employees of the employer shall be interested parties with respect to an application for an advance determinations as to the qualified status of the retirement plan.

(3) *Certain plan amendments.* In the case of an application for an advance determination as to whether a plan amendment affects the continuing qualification of a plan, if:

(i) There is outstanding a favorable determination letter for a plan year to which section 410 applies, and

(ii) The amendment does not alter the participation provisions of the plan, then paragraphs (b) (1) and (2) of this section shall not apply, and all present employees of the employer who are eligible to participate in the plan (as defined in paragraph (d)(2) of this section), shall be interested parties. For the purpose of this paragraph (b)(3), if qualification of the plan is dependent upon benefits under the plan integrating with those benefits provided under the Social Security Act or a similar program, and if such integration results in excluding any employee or could possibly result in any participant's benefit being reduced to zero and the amendment alters contributions to or the amount of benefits payable under the plan, then the amendment shall be considered to alter the participation provisions of the plan.

(4) *Collectively bargained plans.* In the case of an application with respect to a plan described in section 413(a) (relating to collectively bargained plans), paragraphs (b) (1), (2) and (3) of this section shall not apply and all present employees covered by a collective-bargaining agreement pursuant to which the plan is maintained shall be interested parties.

(5) *Plan terminations.* In the case of an application for an advance determination with respect to whether a plan termination affects the continuing qualification of a retirement plan, paragraphs (b) (1), (2), (3) and (4) of this section shall not apply, and all present employees with accrued benefits under the plan, all former employees with vested benefits under the plan, and all

beneficiaries of decreased former employees currently receiving benefits under the plan, shall be interested parties.

(6) *Exceptions.* (i) In the case of an application to which paragraph (b) (1) or (2) of this section applies, an employee who is not eligible to participate in the plan shall not be an interested party if such employee is excluded from consideration for purposes of section 410(b)(1) by reason of section 410(b)(2) (B) or (C).

(ii) In the case of an application to which paragraph (b) (1) or (2) of this section applies, an application to which paragraph (b) (1) or (2) of this section applies, an employee who is not eligible to participate in the plan shall not be an interested party if such plan meets the eligibility standards of section 410(b)(1)(A).

(iii) In the case of an application to which paragraph (b)(1) of this section applies, an employee who is not eligible to participate in the plan shall not be an interested party with respect to such plan if such employee is eligible to participate in any other plan of the employer with respect to which a favorable determination letter is outstanding (whether or not issued pursuant to an application to which this section applies), or in such a plan of another employer whose employees, by reason of section 414 (b) or (c), are treated as employees of the employer making the application.

(iv) In the case of an application to which paragraph (b)(2) of this section applies, an employee who is not eligible to participate in the plan shall not be an interested party with respect to such plan if such employee is eligible to participate in a plan described in section 413(a) (relating to collectively bargained plans) maintained by the employer with respect to which a favorable determination letter is outstanding (whether or not issued pursuant to an application to which this section applies), or in such a plan of another employer whose employees by reason of section 414 (b) or (c), are treated as employees of the employer making the application.

(7) *Applicability.* Paragraph (b) of this section shall only apply in the case of an application made to the Internal Revenue Service requesting an advance

determination that a retirement plan as defined in section 7476(d) and paragraph (a) of this section meets the requirements for qualification for a plan year or years to which section 410 applies to such plan. See paragraphs (c) (4) and (5) of this section for special rules in respect of years to which section 410 applies.

(c) *Special rules.* For purposes of paragraph (b) of this section and § 1.7476-2:

(1) *Time of determination.* The status of an individual as an interested party and as a present employee or former employee shall be determined as of a date determined by the applicant, which date shall not be earlier than five business days before the first date on which the notice of the application is given to interested parties pursuant to § 1.7476-2 nor later than the date on which such notice is given.

(2) *Controlled groups, etc.* An individual shall be considered to be an employee of an employer if such employee is treated as that employer's employee under section 414 (b) or (c).

(3) *Self-employed individuals.* A self-employed individual shall be considered an employee.

(4) *Years to which section 410 relates.* For purposes of paragraph (b)(7) of this section, section 410 shall be considered to apply to a plan year if an election has been made under section 1017(d) of the Employee Retirement Income Security Act of 1974 to have section 410 apply to such plan year, whether or not the election is conditioned upon the issuance by the Commissioner of a favorable determination letter.

(5) *Government, church plans, etc.* In the case of an organization described in section 410(c)(1), section 410 will be considered to apply to a plan year of such organization for any plan year to which section 410(c)(2) applies to such plan.

(d) *Definitions.* For the purposes of paragraph (b) of this section and § 1.7476-2:

(1) *Employer.* The term "employer" includes all employers who maintain the plan with respect to which an advance determination applies. A sole proprietor shall be considered such person's own employer and a partnership is considered to be the employer of each of the partners.

(2) *Eligible to participate.* For purposes of this section, an employee is eligible to participate in a plan if such employee:

- (i) Is a participant in the plan,
- (ii) Would be a participant in the plan if such employee met the minimum age and service requirements of the plan or
- (iii) Would be a participant in the plan upon making mandatory employee contributions.

In applying this paragraph (d)(2), plan provisions (with respect to which the determination regarding qualification is to be based) not in effect on the first date on which notice is given to interested parties shall be treated as though they were in effect on such date.

(3) *Place of employment.* A place of employment includes all worksites within a plant, installation, store, office, or similar facility. Any employee who has no principal place of employment shall be treated as though such employee's principal place of employment is that place to which such employee regularly reports to the employer.

(e) *Effective date.* The provisions of this section apply to applications referred to in paragraph (a) of this section made on or after June 21, 1976.

[T.D. 7421, 41 FR 20876, May 21, 1976; 41 FR 22561, June 4, 1976, as amended by T.D. 8179, 53 FR 6613, Mar. 2, 1988; T.D. 9006, 67 FR 47456, July 19, 2002]

§ 1.7476-2 Notice to interested parties.

(a) *In general.* Any person applying to a district director for a determination described in paragraph (b)(7) of § 1.7476-1 shall cause notice of the application to be given to persons who qualify as interested parties under § 1.7476-1 with respect to the application, whether or not such application is received by the Internal Revenue Service before the date on which section 410 applies to the plan.

(b) *Nature of notice.* The notice required by this section shall—

- (1) Contain the information and be given within the time period prescribed in § 601.201(o)(3) of this chapter; and
- (2) Be given in a manner prescribed in paragraph (c) of this section.